FILE COPY

Office - Supreme Court, U. S.
FILED
OCT 12 1944
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1944

No. 588

ALABAMA STATE FEDERATION OF LABOR, LOCAL UNION No. 103 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AMERICAN FEDERATION OF LABOR, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA and B. E. JONES,

Petitioners,

vs.

ROBERT E. MCADORY, as Solicitor of Jefferson County, Alabama, and HOLT MCDOWELL, as Sheriff of Jefferson County, Alabama.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA AND BRIEF IN SUPPORT THEREOF.

HORACE C. WILKINSON,
Birmingham 3, Alabama,
Counsel for Petitioners.

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
Washington 5, D. C.,
Of Counsel for Petitioners.

J-20435

Index.

	Page
Petition for Writ of Certiorari	1
Summary Statement of Matter Involved	2
Statement as to Jurisdiction	5
Questions Presented	6
Reasons Relied on for Allowance of Writ	7
Brief in Support of Petition for Writ of Certiorari	11
The Opinion of the Court Below	11
Jurisdiction	11
Statement of the Case	11
Specification of Errors	12
Argument	12
I. Sections 7 and 16, Respectively, Impose a Previous General Restraint on and Prohibit the Exercise of the Civil Rights of Assemblage and Speech in Violation of the First and Fourteenth Amendments to the United States Constitution	12
II. Aside From the Question of Civil Rights, Sections 7, 15 and 16 Constitute an Arbitrary and Unreasonable Exercise of the State Police Power	21
III. Sections 7, 15 and 16 Deny Petitioners Equal Protection of the Laws	25
IV. Sections 7 and 16 Deprive and Deny Petitioners Rights Granted and Protected Under the Wagner Act in Violation of Article VI of the United States Constitution	27
V. Sections 15 and 16 Are So Ambiguous as to Deny Due Process of Law	28
Conclusion	30
Exhibit "A"	33
Exhibit "B"	42

Table of Cases Cited.

	Page
Allen-Bradley v. Wisconsin Employment Relations Board, 315 U. S. 740	9, 28
Borden's Farm Products v. Baldwin, 283 U. S. 194	22
Cooley v. Board of Wardens, 12 How. (U. S.) 299	27
DeJonge v. Oregon, 299 U. S. 353	15, 18
Frost v. Corporation Commission, 278 U. S. 515	9, 25
Gibbons v. Ogden, 9 Wheat (U. S.) 1	27
Grosjean v. American Press Co., 297 U. S. 233	17
Hague v. C. I. O., 307 U. S. 496	8, 16
Herndon v. Lowry, 301 U. S. 242, 81 L. Ed. 1066	15
Hines v. Davidowitz, 312 U. S. 52	9, 27
International Text Book v. Pigg, 217 U. S. 106	17
Lanzetta v. New Jersey, 306 U. S. 451	9, 28
Lovell v. City of Griffin, 303 U. S. 44	17
McGoldrick v. Gulf Oil Corporation, 309 U. S. 414	27
Murdock v. Pennsylvania, 319 U. S. 105	8, 15, 16, 17
National Labor Relations Board v. Jones & Laughlin Steel Corporation, 301 U. S. 1	16
Nebbia v. New York, 291 U. S. 502	8, 21
Schneider v. New Jersey, 308 U. S. 146	17, 20
Soss Manufacturing Co., 56 N. L. R. B. No. 70, 1944	28
Southern Railway v. Green, 216 U. S. 400	9, 25
State v. Butterworth, 104 N. J. L. 549, 142 A. 57, 58 A. L. R. 744	14
Thornhill v. Alabama, 310 U. S. 88	18
United States v. Cohen Grocery Co., 255 U. S. 81, 85 L. Ed. 516	28
United States v. Reese, 92 U. S. 214	9, 28
West Virginia v. Barnette, 319 U. S. 624	8, 19, 21
Whitney v. California, 274 U. S. 357, 71 L. Ed. 1095	15

Statutes Cited.

Act of Congress of February 13, 1935, Section 237-b, 28 U. S. C. A., Section 344-b	5
National Labor Relations Act, 49 Stat. 449	7, 27
Railway Labor Act, 48 Stat. 1185	26

Supreme Court of the United States

OCTOBER TERM, 1944

No.

ALABAMA STATE FEDERATION OF LABOR, LOCAL UNION NO. 103 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AMERICAN FEDERATION OF LABOR, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA and B. E. JONES,

Petitioners,

vs.

ROBERT E. MCADORY, as Solicitor of Jefferson County, Alabama, and HOLT MCDOWELL, as Sheriff of Jefferson County, Alabama.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Justices of the Supreme Court of the United States:

The above named petitioners respectfully petition for a writ of certiorari to review a decision of the Supreme Court of Alabama (*Alabama State Federation of Labor, et al.*, v. *Robert E. McAdory, as Solicitor, etc., et al.*, 18 Southern (2) 810, Adv. Sheets), rendered on May 25, 1944, application for rehearing denied by the Supreme Court of Alabama on June 22, 1944. Such decision affirmed in part and reversed in part a decree of the Circuit Court of Jefferson County.

SUMMARY STATEMENT OF MATTER INVOLVED.

This case involves an action for a declaratory judgment commenced by petitioners as plaintiffs in a suit filed pursuant to the Alabama Declaratory Judgment Statute (Title 7, Secs. 156-168, Code of 1940) in which it was sought to have declared as unconstitutional certain sections of what is commonly referred to as the Bradford Act (Act of 1943, p. 253), regulating labor organizations and their members.

The Bradford Act was passed by the Alabama Legislature in 1943, and became effective upon its approval by the Governor of Alabama on June 29, 1943. (A copy of the Act is appended to this petition and brief as Exhibit "A".) The Act is a comprehensive enactment dealing with labor. It establishes a Department of Labor and sets up mediation machinery; it seeks to license the functioning of labor organizations by requiring the filing of various reports and financial statements and the payment of annual fees; it regulates the internal affairs and activities of labor organizations; and it regulates various aspects of picketing, boycotting and striking. Civil and criminal liabilities are imposed for violations of the provisions of the Act. Only three sections of the Bradford Act (Secs. 7, 15 and 16) are involved under this petition for certiorari; the remaining sections of the Act were either held to be unconstitutional by the Alabama Supreme Court, or their validity was not challenged.

Section 7 prohibits labor organizations from "functioning" in the State of Alabama, except upon the compliance with certain conditions, among which are the filing of copies of constitutions and by-laws of local and international organizations; the payment of an annual fee; and the filing of an annual report containing the name and address of the organization, the names of its principal officers together with the total remuneration received by each officer, the date of election of such officers, the number of paid-up members, a complete and detailed financial statement of all fees, dues and other receipts, together

with a list of all disbursements with names of recipients and purposes therefor, and a complete statement of all assets owned by the organization.

Section 15 makes it unlawful for any labor organization or member or officer thereof to demand, collect or receive, directly or indirectly, from any person any sum of money (other than initiation fees or dues) "as a work permit or as a condition for the privilege to work".

Section 16 makes it unlawful for "any executive, administrative, professional, or supervisory employee" to become a member of or to be accepted into membership by any labor organization if such organization permits membership to employees other than those above named.

The petitioners (plaintiffs below) are the Alabama State Federation of Labor, the American Federation of Labor, the United Brotherhood of Carpenters and Joiners of America, Local No. 103 of such organization, and B. E. Jones, a member and officer of said Local No. 103 who is also an employee employed in an administrative or supervisory capacity (R. 2). The plaintiff labor organizations brought the action on their own behalf, as well as on behalf of their members located in the State of Alabama (R. 9, 10).

The defendants are Robert E. McAdory, Solicitor of Jefferson County; Holt McDowell, Sheriff of Jefferson County; and William McQueen, Acting Attorney General of the State of Alabama, state officials charged with enforcement of the Bradford Act (R. 18).

The complaint for declaratory judgment, in so far as relevant to the prayer that Sections 7, 15 and 16 be adjudged unconstitutional and void, alleged that Sections 7 and 16 imposed previous general restraints and prohibitions upon the exercise by plaintiffs of their civil rights of assembly and speech; that Sections 7, 15 and 16 constituted an arbitrary and unreasonable exercise of the state police power, depriving plaintiffs of the rights of liberty and property, protected under the Fourteenth Amendment; that Sections 7, 15 and 16 were discriminatory as to plaintiffs and in violation of the equal pro-

tection of the laws clause of the Fourteenth Amendment; that Sections 15 and 16 were so vague and indefinite as to violate the due process of law clause of the Fourteenth Amendment; that Sections 7 and 16 violated Article IV of the United States Constitution providing that the Constitution and Laws of the United States shall be the supreme law of the land, in that such sections deprive of rights granted and guaranteed under the National Labor Relations Act; and that Section 15 violated Article I, Section 10, of the United States Constitution, providing that no State shall make laws impairing the obligations of contracts, in so far as such section made illegal various provisions contained in existing constitutions and by-laws of plaintiff organizations. The complaint alleged specifically the manner in which plaintiffs were deprived of the various constitutional rights asserted, and prayed for an adjudication that Sections 7, 15 and 16, among others, be declared unconstitutional, null and void. (R. 2-24).

After certain preliminary motions were disposed of, the case went on for trial before three judges of the Circuit Court of Jefferson County. To obviate the taking of testimony, the parties stipulated as to the bulk of the factual matters alleged in the petition, and, in addition, affidavits by William Green (President of the American Federation of Labor), W. O. Hare (Secretary-Treasurer of the Alabama State Federation of Labor), and Sam Roper (President of the Alabama State Federation of Labor), setting forth certain facts in respect to the operation and functioning of labor organizations generally and in the State, were offered in evidence, with the agreement that each affiant would testify to the matters set out in his affidavit if he were sworn and examined in open court (R. 226). In addition, certain other witnesses were examined. Thus, either by stipulation of facts or the introduction of uncontradicted evidence there was competently proved: plaintiffs' interest in the proceeding and their standing to raise the constitutional issues; the manner in which labor organizations functioned and operated, with particular reference to the activities and functioning

of unions and their members as concomitants of the rights of assembly and speech; the manner in which plaintiffs were aggrieved by reason of the threatened enforcement of the various sections of the Act challenged as unconstitutional; the lack of a rational basis for the particular sections and their effect as a practical matter upon the ordinary functioning of labor organizations; and the manner in which such sections were discriminatory.

The Circuit Court held certain sections of the Act to be constitutional, among them being Section 7, held certain other sections to be unconstitutional, and refused to pass upon Sections 15 and 16 (R. 221). The judgment of the Circuit Court was appealed to the Supreme Court of the State upon assignments and cross-assignments of error, in which the constitutional issues were once again raised (R. 318-319). After hearing argument, the Supreme Court, on May 25, 1944, in a 4 to 2 decision, sustained the judgment of the Circuit Court and, in addition, declared that Sections 15 and 16 of the Bradford Act were constitutional. (A copy of the decision and dissents is appended to this Petition and Brief as Exhibit "B".) In its decision the Court resolved all procedural and jurisdictional questions in favor of petitioners and held that they had a standing to obtain an adjudication under the Alabama Declaratory Judgment Act concerning the constitutionality of Sections 7, 15 and 16 among others. Application for rehearing was made by both parties, which application was denied on June 22, 1944.

Sections 7, 15 and 16 of the Bradford Act are the only sections challenged by plaintiffs which the Supreme Court held constitutional, and, as before stated, are the only sections involved in this petition for certiorari and review.

STATEMENT AS TO JURISDICTION.

This case is one over which the Court has jurisdiction under the provisions of the Act of Congress of February 13, 1935, Section 237-b, 28 U.S.C.A., Section 344-b.

This case is one in which the validity of Sections 7, 15 and 16 of the "Bradford Act" (Acts 1943, p. 253) is drawn in question upon the ground that such sections on their face and as construed in the opinion and judgment of the Supreme Court of Alabama are repugnant to the Constitution of the United States, and in particular to the Fourteenth Amendment thereto and to the First Amendment thereto. The decision of the Alabama Supreme Court was in favor of the validity of the sections in question. The case was finally disposed of by the courts of Alabama when the Supreme Court of that State on June 22, 1944, entered its order denying application for rehearing. Every possible remedy within the State has been exhausted. The Federal questions were raised at every possible stage in the proceedings below. Thus, the complaint challenged each of the sections as being in violation of the Federal Constitution; the assignments and cross-assignments of error raised such questions; the Federal questions were briefed and argued before the State Supreme Court, and the State Supreme Court passed upon the Federal questions in its opinion. Finally, the application for rehearing again raised the Federal questions.

On September 22, 1944, Mr. Justice Hugo L. Black issued an order extending the time within which to file a petition for writ of certiorari to October 12, 1944.

QUESTIONS PRESENTED.

The following Federal questions, raised and argued before and passed upon by the Alabama Supreme Court, are involved in the present petition for certiorari and review:

1. Does Section 7 of the Bradford Act, requiring the filing of certain statements and reports by labor organizations and the payment of a fee as a condition to the right of labor organizations to "function" in the State, and does Section 16 forbidding supervisory or administrative employees from joining or being admitted into membership into a labor organization, impose a previous general restraint on or constitute a denial of the exercise

by working people of their civil rights of assemblage and speech in violation of the First and Fourteenth Amendments to the United States Constitution?

2. Aside from the question of the deprivation of civil rights, do Sections 7 and 16, and Section 15 making it unlawful for labor organizations or their members to demand, collect or receive any sum of money (except initiation fees or dues) as a "work permit" or as a "condition for the privilege to work", constitute an arbitrary and unreasonable exercise of the state police power and deprivation of plaintiffs' rights of liberty, property and contract protected under the Fourteenth Amendment to and under Article I, Section 10, of the United States Constitution?

3. Are Sections 7, 15 and 16 discriminatory and in violation of the equal protection of the laws clause of the Fourteenth Amendment?

4. Do Sections 7 and 16 deprive or deny plaintiffs' rights granted and protected under the National Labor Relations Act in violation of Article VI of the United States Constitution making the Constitution and Laws of the United States supreme?

5. Are Sections 15 and 16 prescribing certain crimes not known to the common law so ambiguous as to deprive of due process of the law in violation of the Fourteenth Amendment to the United States Constitution?

All of these questions were answered by the Alabama Supreme Court in favor of the validity of Sections 7, 15 and 16.

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

Issues of the utmost importance to labor organizations and their many millions of members throughout the country are involved under this petition for review. The State of Alabama has attempted to license and condition the right of working people to assemble into and function as labor organizations, has sought to prohibit certain classes of employees from joining labor organizations and such

organizations from accepting such classes of employees into membership, and has proscribed the charging or receiving by labor organizations of any fees described vaguely and ambiguously as "work permits". Implicit in such legislation is the assertion by the State of the right to withhold, condition or regulate as it sees fit the right of individuals to assemble into and function as labor organizations. A decision by this Court of the issues presented under this decision will not only resolve similar issues which have arisen in other States which have enacted similar legislation, but will serve to define the allowable area of State control of labor organizations and their members and to determine whether the assemblage into and functioning in labor organizations by working people is a right protected as a concomitant of the civil right of assembly and speech, or is a mere privilege which the State can withhold or regulate or condition as it sees fit.

As more fully set forth in the brief attached hereto, it is petitioners' principal contention that the determination of the court below that Sections 7 and 16 do not previously restrain or deny rights of assembly and speech is contrary to the holdings of this Court in such cases as *Hague* v. *C.I.O.*, 307 U. S. 496; *Murdock* v. *Pennsylvania*, 319 U. S. 105; and *West Virginia* v. *Barnette*, 319 U. S. 624.

In addition, constitutional rights of a less fundamental, although no less important, status are asserted to have been denied by the legislation in question, and the determination of the court below in favor of the validity of the legislation to be in conflict with the rationale of many decisions of this Court. Thus, the determination of the Alabama Supreme Court on the question of the reasonableness of the exercise by the State of its police powers under the legislation in question is asserted to be in conflict with the decision of this Court in *Nebbia* v. *New York*, 291 U. S. 502; its determination on the question of whether the legislation is discriminatory and in violation of the equal protection of the laws clause of the Fourteenth Amendment is in conflict with the decision of this Court

in *Frost* v. *Corporation Commission*, 278 U. S. 515, and *Southern Railway* v. *Green*, 216 U. S. 400; its determination on the question of whether the legislation denies or withholds rights granted under the Wagner Act in violation of Article VI of the Federal Constitution is in conflict with the decision of this Court in *Hines* v. *Davidowitz*, 312 U. S. 52, and *Allen-Bradley* v. *Wisconsin Employment Relations Board*, 315 U. S. 740; and its determination on the question of whether Sections 15 and 16 are so ambiguous as to deny due process of law in violation of the Fourteenth Amendment is in conflict with the decision of this Court in *Lanzetta* v. *New Jersey*, 306 U. S. 451, and *United States* v. *Reese*, 92 U. S. 214.

The issues involved in this petition are of a substantial nature, and many of them have not heretofore been determined by this Court. Similar drastically restrictive legislation directed against labor organizations and their members, involving the right of working people to form, join and assist labor organizations, and impairing the ability of labor organizations adequately to function in the interests of its members, has recently been passed in some six or seven states in addition to Alabama and threatens to be passed in other states. Although actions in law and equity to obtain an adjudication of the constitutionality of such legislative enactments have been instituted, this is the first case in which an appeal to the United States Supreme Court has been available. An adjudication of the issues in this case by this Court is necessary in order to set at rest many of the difficult and perplexing constitutional questions that have arisen by reason of the various above described enactments.

WHEREFORE, Your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Clerk of the Supreme Court of Alabama, commanding that court to certify and send to this Court for review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered 6 Div. 234, entitled "Alabama State Federation of Labor,

Local Union No. 103 United Brotherhood of Carpenters and Joiners of America, etc., et al., Appellants, vs. Robert E. McAdory, as Solicitor of Jefferson County, Alabama, et al., Appellees," and that the judgment of the Supreme Court of Alabama may be reviewed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem just and meet; and your petitioners will ever pray.

HORACE C. WILKINSON,
608 Farley Building,
Birmingham 3, Alabama,
Counsel for Petitioners.

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
736 Bowen Building,
Washington 5, D. C.,
Of Coinsel for Petitioners.

Supreme Court of the United States

OCTOBER TERM, 1944

No.

ALABAMA STATE FEDERATION OF LABOR, LOCAL UNION NO. 103 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AMERICAN FEDERATION OF LABOR, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA and B. E. JONES,

Petitioners,

vs.

ROBERT E. MCADORY, as Solicitor of Jefferson County, Alabama, and HOLT MCDOWELL, as Sheriff of Jefferson County, Alabama.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

THE OPINION OF THE COURT BELOW.

The opinion of the Supreme Court of Alabama is reported in 18 Southern (2d) 810, Adv. Sheets (R. 321), application for rehearing denied by the Alabama Supreme Court on June 22, 1944. A copy of such opinion is appended hereto as Exhibit "B".

JURISDICTION.

The statement concerning jurisdiction is set forth in the petition and is incorporated herein by reference.

STATEMENT OF THE CASE.

The statement of the case appears in the petition and is incorporated herein by reference. There is no dispute concerning the facts involved, and such facts as are relevant are set forth in such statement and in the arguments that follow.

SPECIFICATION OF ERRORS.

The Supreme Court of Alabama erred in the following respects:

1. In holding that Sections 7 and 16 of the Bradford Act do not impose a previous general restraint on or constitute a denial of the exercise by petitioners of their civil rights of assemblage and speech in violation of the First and Fourteenth Amendments to the United States Constitution.

2. In holding that Sections 7, 15 and 16 do not constitute an arbitrary and unreasonable exercise of the state police power and a deprivation of petitioners' rights of liberty, property and contract protected under the Fourteenth Amendment to, and under Article I, Section 10 of, the United States Constitution.

3. In holding that Sections 7, 15 and 16 are not discriminatory and in violation of the equal protection of the laws clause of the Fourteenth Amendment.

4. In holding that Sections 7 and 16 do not deny petitioners of rights granted and protected under the National Labor Relations Act in violation of Article VI of the United States Constitution making the Constitution and Laws of the United States the supreme law of the land.

5. In holding that Sections 15 and 16, prescribing certain crimes not known to the common law, are not so ambiguous as to deprive of due process of the law in violation of the Fourteenth Amendment to the United States Constitution.

ARGUMENT.

I.

Sections 7 and 16, Respectively, Impose a Previous General Restraint on and Prohibit the Exercise of the Civil Rights of Assemblage and Speech in Violation of the First and Fourteenth Amendments to the United States Constitution.

It is to be noted at the outset that Section 7 of the Bradford Act prohibits labor unions from "*functioning*"

in the State of Alabama until and unless certain conditions imposed by the State are met or until labor organizations do what amounts to the taking out of a license and paying a license fee. The term "functioning", obviously, would include the doing of every act normally incident to the carrying on of labor activities by working people assembled into labor organizations for their mutual aid and protection, including the formation of such organizations, the holdings of meetings by members of such organizations, engaging in collective bargaining, and the dissemination of information by such organizations.

In order to determine whether the State can condition or license such functionings, it is necessary to determine what is the standing under the Constitution of the right of working people to assemble into and function through labor organizations for their mutual economic aid and protection. It is submitted that this right is one which is a concomitant of the right of assemblage and speech and has the same high standing as has the right of persons to assemble into political organizations for political purposes, or into religious organizations for religious purposes, or into scientific organizations for scientific purposes.

When the purpose of assemblage by working people into labor organizations and the nature of their activities after being formed into labor organizations are considered in the light of common knowledge, and in the light of the evidence in this case, it readily becomes apparent that labor organizations, like political associations or religious organizations, are simply groups of individuals gathered and assembled together for the more effective exercise, through joint action, of the constitutional rights to which each individual American is entitled and may lawfully exercise. Individual workers, being helpless as individuals to deal and cope with their employers who have at their command vast aggregations of capital and who are usually organized together in the form of corporations or employer associations, being ineffective as individuals to petition the government for redress or grievances and for protective legislation, and being unable as individuals

effectively to enlist sympathy and support in their efforts to maintain and advance their working conditions and to protect the means of their very existence, have assembled together to accomplish these purposes into voluntary unincorporated groups known as labor organizations.

The day-to-day functionings of labor organizations, be they local, state, national or international, are seen to constitute in their substance the practical and effective exercise of the rights of assembly, speech, press and petition. Thus, there is a constant holding of meetings, a constant solicitation of new members both by paid representatives and by the ordinary membership, the constant carrying on of educational programs, the constant attempt by speech, handbill, letter or pamphlet to enlist the aid and sympathy of the public in the common struggle to protect and improve working standards, of the legislatures, both state and national, to obtain favorable or protective legislation, and the constant attempt to present requests, views and thoughts to employers through the process of collective bargaining—in general, a constant, common consultation, exchange of views, gathering and spreading of information, and dissemination of information and views to the employer, the general public and the legislatures.

That the meeting and joining together by working people into labor organizations, and the carrying on of a common consultation and other activities for mutual aid and protection in economic matters, constitute the practical exercise of assembly and speech as protected under the First Amendment is no new or startling doctrine. The right of people peacefully to assemble for lawful purposes existed long before the adoption of the Constitution, is one of the inherent attributes of citizenship under a free government, and is found wherever free government exists. *State* v. *Butterworth*, 104 N.J.L. 549, 142 A. 57, 58 A.L.R. 744.

Labor unions constitute assemblage for common conference and action on a variety of subjects; political, legislative, economic, social. Each of these types of purposes

and objectives fall within the protected sphere of constitutional rights. As stated by Justice Jackson in *Murdock* v. *Pennsylvania*, 319 U.S. 105:

> "In my view the First Amendment assures the broadest tolerable exercise of free speech, free press, and free assembly, not merely for religious purposes, but for political, economic, scientific, news, or information ends as well."

A generation before this pronouncement Justice Brandeis, in his concurring opinion in *Whitney* v. *California*, 274 U.S. 357, 71 L. Ed. 1095, announced a similar conclusion.

Moreover, the Supreme Court has expressly declared that these rights are protected not merely in the occasional gathering of people or the attempted speech on some specific isolated occasion, but more important, in the general right of organization of continuing groups for regular meetings and assemblages. *Herndon* v. *Lowry*, 301 U.S. 242, 81 L. Ed. 1066, upheld the constitutional right "to address meetings and organize parties." *DeJonge* v. *Oregon*, 299 U.S. 353, like the *Herndon* case turned on the right of individuals to form and organize groups, to solicit membership and to engage in the general dissemination of information through the medium of those organized groups.

The Supreme Court of Alabama deemed the functioning of labor organizations no different from the functioning of any commercial enterprise and declared that the assemblage of working people into labor organizations for purposes of mutual aid and protection and for the dissemination of information was merely incidental to the general functioning of labor unions. This overlooks entirely the purpose of and the function performed by the assemblage and use of speech and press by working people under labor organizations. The very significant line between the use of the printed or spoken word for discussion of issues of public importance and the use of the printed or spoken word for commercial and private purposes was

expressly and clearly recognized, for example, in *Murdock* v. *Pennsylvania, supra,* in the following words:

> "The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills."

The courts have expressly and for some years recognized and declared that the organizations and associations into which millions of American working men and women have gathered for mutual and community improvement, for advancement of the welfare of all working men and women, politically, socially and economically, do indeed constitute the exercise of these basic rights described in the cases cited above and are not analogous to commercial activities.

Chief Justice Stone, in his opinion in the case of *Hague* v. *C.I.O.*, 307 U.S. 496, determined that the guarantee of free speech and assembly under the First Amendment extended to protection against attempts by the officers of Jersey City to prevent the labor organizations involved in that case "from holding meetings and disseminating information whether for the formation of labor organizations or for any other lawful purpose." In that case, indeed, the purpose of holding meetings in Jersey City, with which the city officials were enjoined from interfering, "was to organize labor unions in various industries in order to secure to workers the benefits of collective bargaining with respect to betterment of wages, hours of work and other terms and conditions of employment." The injunction was sustained because this right was one safeguarded under the First Amendment, protected against infringement by the State under the Fourteenth Amendment.

The significance of union organization as a means of securing real effectuation for the individual worker of his constitutional right to contract freely is well summarized in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U.S. 1, 33.

If it be recognized that the "functioning" of labor organizations embodies with it the exercise by working people of rights of assembly and speech, in what manner, it can be asked, does Section 7 restrain or impair the exercise of such rights? The answer is clear. By requiring the filing of constitutions, by-laws and amendments thereto, and the filing of detailed annual reports and financial statements, the State has in effect undertaken to license labor organizations just as the State would license an ordinary commercial enterprise. In *International Text Book* v. *Pigg*, 217 U.S. 106, the Supreme Court held that the requirement by the State of Kansas that foreign corporations file a similar but much less detailed statement constituted in effect a licensing of the business.

An equally important restraint upon the functioning of labor organizations is the exaction of an annual fee which, although nominal in amount, is exacted solely as a license or permit fee or fee on the very right to function. *Murdock* v. *Pennsylvania*, *supra*, involved a similar tax, nominal in amount, which was declared invalid as one imposed upon the exercise of constitutional rights.

The Supreme Court has ever been diligent to strike down as unconstitutional any attempt by the State to impose any previous restraint upon the exercise of rights guaranteed in the Bill of Rights. *Lovell* v. *City of Griffin*, 303 U. S. 44; *Schneider* v. *New Jersey*, 308 U. S. 146; *Murdock* v. *Pennsylvania*, *supra*.

It is no defense of the statute to claim that the fees are not excessive or that the State will not deny the license on request. The assertion of the power to grant a license implies the assertion of the power to withhold it. If the State may insist that the rights of free speech, press and assembly can be exercised only on certain terms which go beyond the limits of the constitutional protection, it may insist on prohibiting the enjoyment of those rights altogether. The degree of burden is not the determining factor; it is the power which is asserted that is nonexistent. *Grosjean* v. *American Press Company*, 297 U. S. 233. Even if the license might be secured for the asking,

this would constitute no answer. *Thornhill* v. *Alabama*, 310 U. S. 88.

The Supreme Court of Alabama stated in the present case:

> "If we follow the argument of counsel for plaintiff to its ultimate conclusion, it is difficult to see where any effective legislation could be had concerning regulations of organizations of this character. We think the authorities which we have herein cited clearly demonstrate that they are subject to the police power of the state, and that the contention as to the violation of the constitutional provisions of free speech and assembly invalidates any of the provisions of the Act, is untenable."

There is not involved here any contention or suggestion that labor unions are "above the law" or beyond regulation. In so far as free speech and press and assembly are concerned, the cases make clear the extent to which that regulation may go. In so far as a union or its members engage in any activity which can properly be considered criminal, they are today subject to the provisions of the criminal law. It is this consideration which constitutes one of the cornerstones of American traditions of free speech. Laws may be passed to curb specific criminal conduct but not to curb the very exercise of the right of speech or assembly. Referring to the basic and inviolable nature of the rights embodied in the guarantees of the constitutional Bill of Rights, the Supreme Court has pointed out (*DeJonge* v. *Oregon*, *supra*):

> "These rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for

> free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

Section 7 and the paying of a license fee thereunder are not directed to the cure of any particular abuses; organizations, whether good or bad, complying with Section 7, can continue to function as before. Section 7 is clearly directed to licensing the right of organizations to function at all.

Underlying all of the cases passing on the constitutionality of state interference with free speech, press or assembly is the basic distinction between the standards of constitutionality applied to legislation affecting rights related to property or to commercial enterprises and legislation related to the fundamental democratic freedoms of speech, press, assembly and worship.

This distinction is best expressed in the words of the Court in *West Virginia* v. *Barnette*, 319 U. S. 624:

> "In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a state to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction to prevent grave and immediate danger to interests which the State may lawfully protect."

Section 16, which makes it unlawful for any administrative or supervisory employee to become a member in or be accepted for membership by labor organizations, even more clearly operates to prohibit the exercise of constitutional rights by certain classes of working people. As seen by one of petitioners' exhibits (R. 268), numerous labor organizations have traditionally enrolled administrative or supervisory employees into membership, and many such employees have traditionally sought membership in labor organizations for their mutual aid and protection. The right thus to assemble into an organization for economic ends is as inviolable as the right of other persons to assemble into organizations for religious or political purposes. The right cannot be abridged for reasons of race, creed, color, social position or, as in the present case, hierarchy of employment. Consideration by the assemblage itself of whether the purposes of the assemblage can be accomplished by admitting certain classes of supervisory employees has in the past served to eliminate those categories whose presence in the assemblage would defeat its purposes, and in the future must necessarily continue to determine the question of exclusion or inclusion if freedom of assemblage is to have any content or any meaning. As stated in *Schneider* v. *New Jersey, supra*:

> "Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions."

It may be felt expedient in certain sections of the country to prohibit membership into religious organizations because of color, or into political organizations because of religious belief. To prohibit the petitioner, Jones, from joining and assembling with his fellow workers in an organization to which he has belonged for years, and which is willing to accept him into membership, is a denial of a right fundamental to our society.

which cannot find justification in belief as to its desirability.

II.

Aside From the Question of Civil Rights, Sections 7, 15 and 16 Constitute an Arbitrary and Unreasonable Exercise of the State Police Power.

Let us assume civil rights are not violated by Secs. 7, 15 and 16. Since the decision of this Court in *Nebbia* v. *New York*, 291 U. S. 502, it is clear that the State has full freedom to regulate and condition the exercise of rights other than those protected under the First Amendment when there is any rational basis for so doing. *West Virginia* v. *Barnette*, *supra*. Whether there is or is not a rational basis is for this Court to determine, and in making this determination the Court is guided by somewhat less vague or inarticulate premises than the phrases of the Fourteenth Amendment or the tests of arbitrariness or unreasonableness. The problem is a severely practical one, dependent upon the facts and circumstances of each individual case. In determining whether any particular legislation has rational basis, this Court has made the following inquiries:

Do circumstances or economic conditions exist which require the intervention of the State? Is there in fact a danger to the health, safety or well-being of members of the State in the existing situation? Will the method adopted by the State guard against it? Is the burden on the individual too heavy to justify the restriction? Are the means adopted by the State reasonably related or relevant to the objectives sought, or do they impose hardships in disproportion to the benefits which the State seeks to confer? Is it possible to secure the objects sought without impairing essential rights and principles? And finally, are the interests of the public generally, as distinguished from those of a particular class, such as to require the interference of the State?

What are the factual or economic circumstances which justify the attempted regulations or prohibitions contained

under Sections 7, 15 and 16? In the first place, it is significant that the Alabama Legislature undertook no legislative investigation under which the facts in respect to the operations of labor organizations within the State and their effect upon the public could be ascertained. In the *Nebbia* case, *supra*, and in similar cases findings of legislative investigatory bodies were heavily relied upon by this Court in affording justification for the particular regulations. In the present case it was affirmatively shown, and without contradiction by the Attorney General, that no particular abuses existed which reasonably would require legislative interference in respect to the matters restricted under Sections 7, 15 and 16 of the Bradford Act. Thus, for instance, in regard to Section 7 the State did not rely upon any existing, abusive conditions or practices in respect to union financial matters. On the contrary, the evidence affirmatively showed that unions operating in the State regularly made full financial accounting to their membership. Neither did the State rely upon or claim any monopoly upon the supply of labor by labor organizations within the State as a justification for the public filing of financial statements. While the State, of course, has the power to anticipate evils or abuses, this power of anticipation must be premised upon conditions which give a reasonable basis for the apprehension and cannot be predicated upon "any financial conjecture." *Borden's Farm Products* v. *Baldwin*, 283 U. S. 194.

On the other hand, Section 7 would burden unions out of all proportions to any public benefit that Section 7 might bring. In order to be assured that they would not be penalized civilly in the sum of $1,000 for a possible violation of Section 7 (as set forth under Section 8), it would be necessary for each union, regardless of its size or finances, to hire, if not certified public accountants, at least persons with a better knowledge of accounting practices and procedures than that possessed by working men and women who, as in the large majority of cases, have, without compensation, assumed the job of president or secretary or treasurer of a local union in the past. Further, the possi-

bility of criminal penalties for failure to properly make the reports would operate to discourage many otherwise available workers from accepting union positions.

Similar considerations are applicable to Section 15. The State can point to no prevailing abusive conditions in respect to the collection by unions of anything which could be classified as "work permits." On the contrary, the collection under certain conditions of sums of money, although not as initiation fees or dues, constitutes a practice traditionally adopted in union constitutions and by-laws and was shown by the evidence to be indispensable to the proper functioning of labor organizations. Section 15 constitutes an outright and unconditional prohibition upon the collection of all fees which are not initiation fees or dues if employment is contingent upon the payment of such fees. Section 15 is not designed merely to prevent the fraudulent or arbitrary collection of fees or the collection of fees in excessive amount and without relation to any benefits received by the person paying the fee.

Accordingly, Section 15 makes it a crime for labor organizations to engage in such accepted practices as the following: The collection of nominal fees from non-member apprentices in return for which apprentices receive the guidance and teaching of the journeymen members of the union with whom they are employed, and the protection of the collective bargaining agreement that has been obtained through the efforts and sacrifices of the journeymen members in whose trade they are apprenticing; the charging of fees to temporary workers (who do not desire to join a union and pay its initiation fees) for permission to work under the highly beneficial terms of an all-union contract; and the requiring of the payment of a fee as a condition of working under an all-union contract in the case of a transfer from one local union to another during the period necessary for the local to investigate the record, the capacity and integrity of the person applying for the transfer before he is admitted to membership.

The State cannot and does not attempt to point to any abusive conditions as justification for the prohibition con-

tained in Section 15, and it is submitted that there is no public interest to be served by the blanket prohibition of the collection of any and all work permit fees that is in any way commensurate with the harm done to labor organizations in outlawing these traditional practices concerning which there has been no complaint.

Finally, in respect to Section 16 there is likewise a complete lack of rational basis for the prohibition against so-called "supervisory" or "administrative" employees (assuming these are identifiable classes) joining labor organizations which likewise take into membership non-supervisory or non-administrative employees. The State can point to no abusive conditions arising because of the fact that supervisory employees are members of labor organizations, and the evidence affirmatively shows that such practice has resulted in no harm to the public. As seen from the bulletin prepared by the United States Department of Labor's Bureau of Labor Statistics (R. 269):

> "Foremen membership in unions and the inclusion of foremen under agreements covering production workers has long been the usual practice in the printing and building trades, in the metal trades insofar as they operate on a craft basis, in many of the railroad trades, and to a greater or lesser extent, among the teamsters, longshoremen and others."
>
> * * * * *
>
> "During the last few years there has been a pronounced movement on the part of foremen, especially in large companies, to organize into unions and to bargain collectively with their employers."

Surely, unless evidence was forthcoming that the traditional practice of a large number of trade unions to take into membership minor supervisory employees has resulted in any great detriment to the public or in any inability of management to function, it cannot be declared that deprivation of the very fundamental right of the individual to seek to join with his fellow employees for his protection and advancement has any basis in existing circumstances, or that any real or commensurate benefit to the public would thereby result.

III.

Sections 7, 15 and 16 Deny Petitioners Equal Protection of the Laws.

In making classifications and imposing limitations upon particular groups, the State must act on the basis of a reasonable relationship to the object sought and not on the basis of any arbitrary and unreasonable classification, and all within a class must be treated equally. *Frost* v. *Corporation Commission*, 278 U. S. 515; *Southern Railway* v. *Green*, 216 U. S. 400.

It is submitted that under the principles announced in the above decisions the requirement of the filing of financial statements under Section 7, which is directed solely against labor organizations, discriminates as between them and all other types of enterprise in general and employer or trade associations in particular. Business corporations or public utilities chartered and licensed by the State are not required to make equivalent disclosures. If, as asserted by the Alabama Supreme Court, the fact that labor organizations extend throughout a large body of the economic life of the State constitutes a reason for requiring such detailed accounting from them, then the operations of the public utilities or the great business corporations or the American Legion or the Farmers Grange, or of organized religion or of political organizations which extend into and affect every branch of public life, should likewise be required to file similar reports.

Even more strikingly discriminatory is the fact that labor associations are subjected to regulation while employer associations and their agents, which associations are set up and established and function for the same purpose of representation on behalf of employers as labor organizations function on behalf of employees, are not licensed and required to file financial statements. Labor organizations on the one hand and employer associations on the other hand are parties to an economic struggle for a fair share of the joint product of capital and labor; these parties are in continuous relationship of either opposition or conciliation in the same field of industrial

relationships. Why should not both parties to this economic struggle be treated alike?

Finally and in any event, by exempting, under Section 2 of the Bradford Act, labor associations of railroad employees from the requirement of Sections 7, 15 and 16, the State has discriminated against labor associations of non-railroad employees. This exclusion is manifestly contrary to the principle that all within the class against which any particular legislation is directed—in this case labor organizations—must be treated alike.

The record shows that railroad labor organizations and non-railroad labor organizations function and operate identically in so far as concerns all matters which are touched upon by Sections 7, 15 and 16 (R. 2 & 232). The Alabama Supreme Court upheld the exclusion of railroad unions not because of any differences in operations or practices as between railroad and non-railroad unions, but because railroad unions come under the provisions of the Railway Labor Act. While this fact may constitute a difference between railroad unions and all other classes of unions, nevertheless this difference has absolutely no relevance to the purposes of the legislation for which the classification is proposed. The Railway Labor Act does not attempt to license railroad organizations or to require the filing of detailed financial statements. The Railway Labor Act does not prohibit "administrative" or "supervisory" employees from becoming members of railway labor unions, nor does it prohibit the collection of "work permit" fees.

A railway union, such as, for instance, one associated with the International Association of Machinists, can charge a "work permit" fee in the case of a transfer from a non-railway union to it, whereas a railway union affiliated with the same International and operating under the same constitutional provisions could not make such a charge in the case of a transfer of a member of a railway union to it; a supervisory employee could join a railway union but could not join a union of non-railway employees, even though both unions are affiliated with the same parent organization. It is submitted that there is no justification in fact or hypothesis for this arbitrary delineation.

IV.

Sections 7 and 16 Deprive and Deny Petitioners Rights Granted and Protected Under the Wagner Act in Violation of Article VI of the United States Constitution.

Sections 7 and 16 operate to impose restraints or conditions upon the exercise of rights unconditionally granted by the National Labor Relations Act; as such they must be declared illegal as being in conflict with Federal legislation in a field in which Congress has paramount authority under Article VI of the United States Constitution which declares that the Constitution and Laws of the United States are supreme.

Section 7, as we have seen, licenses or conditions the very right of individuals to form and join labor organizations, and the right of labor organizations to function. Section 16 forbids certain classes of employees to join labor organizations. These are rights specifically and freely granted under Section 7 of the National Labor Relations Act, pursuant to a valid Congressional purpose of minimizing labor disturbances that might interfere with interstate commerce. As such, these rights must necessarily be exercised free from any restraint by the State; otherwise the broad Federal objective might be forestalled or nullified by State legislation. Assuredly, the State can have no power to license rights set up or established under valid Federal legislation. When Congress passes legislation in the effectuation of powers conferred upon it by the Constitution and in a field in which it has plenary power to assert the right to legislate, all State enactments inconsistent with the Federal legislative plan are superseded, and any State legislation which conflicts with the Federal legislation must fall. Const. Art. VI, cl. 2; *Gibbons* v. *Ogden*, 9 Wheat. (U. S.) 1; *Cooley* v. *Board of Wardens*, 12 How. (U. S.) 299; *Hines* v. *Davidowitz*, 312 U. S. 52; *McGoldrick* v. *Gulf Oil Corp.*, 309 U. S. 414.

Although the Wagner Act contains no restriction upon

the right of administrative or supervisory employees to join labor organizations but, on the contrary, specifically enforces that right (in the matter of *Soss Manufacturing Co.*, 56 N. L. R. B. No. 70, 1944).

Section 16 makes it a crime for such classes of employees to join unions. Similarly, the right granted to employees under Section 7 of the Wagner Act "to bargain collectively through representatives of their own choosing, and to engage in concerted activities", would be frustrated if, as declared under Section 7 of the Bradford Act, labor organizations cannot "function" unless they are licensed, pay an annual fee, or otherwise comply with various conditions prescribed by the State of Alabama. Such attempts on the part of the State to limit or condition rights granted by Congress in the effectuation of a valid Federal purpose must necessarily be declared invalid. *Allen-Bradley* v. *Wisconsin Employment Relations Board*, 315 U. S. 740.

V.

Sections 15 and 16 Are So Ambiguous as to Deny Due Process of Law.

Sections 15 and 16 subject persons engaging in customary and usual practices—practices not constituting crimes under the common law—to fine and imprisonment. While the State may thus create crimes, it is incumbent upon it to be sufficiently explicit so as to inform the public what conduct on the individual's part will render him liable to criminal penalties. A statute, and particularly a criminal statute, which is so vague, indefinite and uncertain as to its meaning that the things and matters prohibited and its application to particular persons are not reasonably ascertainable, is void under the due process clause of the Fourteenth Amendment. *Lanzetta* v. *New Jersey*, 306 U. S. 451; *United States* v. *Reese*, 92 U. S. 214, 23 L. Ed. 563; *United States* v. *Cohen Grocery Co.*, 255 U. S. 81, 85 L. Ed. 516.

Section 15 makes it a crime for a union or its representative to receive any sum (not constituting initiation fees or dues) as a "work permit". What is a "work permit"? No definition of the term is attempted in the

Act, and it is submitted that the term has not achieved such a meaning in common parlance as to indicate clearly and unequivocally to the average citizen just what is intended. Do the three traditional practices discussed under Part IV of this brief constitute the exaction of a "work permit" fee, and is it the intention of the Legislature to outlaw them? The Alabama Supreme Court declines to pass upon this specific question and states that it will determine whether any particular practice comes within the term "work permit" when and if the specific case is presented, but at the same time, the Court declares that the term "work permit" is not ambiguous. Thus, the State Court requires that citizens speculate as to whether any particular practice does or does not come within the prohibition of the law. Can any person of common intelligence be expected to know precisely what is meant by a "work permit"? Obviously, labor organizations and their members are obliged to guess as to which of their established practices now constitute crimes in violation of Section 15.

Similarly with the use of the terms "executive," "administrative", "professional", or "supervisory" in Section 16, forbidding employees of those categories to join labor organizations. Again, no definitions of these terms are set forth in the Act. The National Labor Relations Board, in its nine years of history, has been able to evolve no satisfactory definition of a "supervisory employee", but depends upon the record made before it in each particular case. Is it possible for a clerk having two subordinates working alongside of him to determine whether he is a supervisory or an administrative employee? Or for a "lead man" in a machinists' shop? Assuredly, men of ordinary intelligence must guess as to just what categories can be considered to be included in the broad terms "administrative" and "supervisory".

It is respectfully submitted that Sections 15 and 16 are unconstitutional because they are ambiguous and not susceptible of any exact interpretation so as reasonably to inform the public of the nature of the practices which the State has declared to be criminal.

CONCLUSION.

It is respectfully submitted that, under the decisions cited and discussed in the foregoing arguments, it is clear that petitioners have been denied and deprived of rights granted and secured under the Constitution of the United States, and that the decision of the Alabama Supreme Court should be reversed.

Respectfully submitted,

HORACE C. WILKINSON,
608 Farley Building,
Birmingham 3, Alabama,
Counsel for Petitioners.

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
736 Bowen Building,
Washington 5, D. C.,
Of Counsel for Petitioners.